

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE	)	
COMPANY, JOHN HANCOCK	)	
VARIABLE LIFE INSURANCE	)	
COMPANY, and MANULIFE	)	
INSURANCE COMPANY (f/k/a	)	
INVESTORS PARTNER INSURANCE	)	
COMPANY),	)	CIVIL ACTION NO. 05-11150-DPW
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
ABBOTT LABORATORIES,	)	
	)	
Defendant.	)	

**DECLARATION OF JOSEPH H. ZWICKER**

I, Joseph H. Zwicker, declare:

1. I am an attorney with Choate, Hall & Stewart LLP ("Choate"), counsel for Plaintiffs John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company and ManuLife Insurance Company (f/k/a "Investors Partner Life Insurance") (collectively, "John Hancock").

2. I am duly admitted to practice law in Massachusetts, California and New York.

3. I, along with other attorneys at Choate, represent John Hancock in the above-captioned matter. The following statements are made with my personal knowledge and if sworn as a witness I could and would testify competently thereto.

4. Attached as Exhibit A hereto is a true and correct copy of a letter from Stephen J. Blewitt of John Hancock to James L. Tyree of Abbott, dated January 5, 2006.

5. Attached as Exhibit B hereto is a true and correct copy of a letter from Suzanne A. Lebold of Abbott to Steven J. Blewitt of John Hancock, dated January 24, 2006.

6. Attached as Exhibit C hereto is a true and correct copy of a transcript of a hearing held before this Court in the above-captioned matter on October 13, 2005.

7. Attached as Exhibit D hereto is a true and correct copy of Abbott's Response to John Hancock's Interrogatory No. 13.

8. Attached as Exhibit E hereto is a true and correct copy of the Joint Statement pursuant to Local Rule 16.1.

9. In preparing the instant motion, I reviewed Abbott's Annual Research Plans ("ARPs") between 2001 and 2005. Based on those ARPs, Abbott claims to have spent approximately \$486 million on Program Related costs during the four-year Program Term. That amount is substantially less than the Aggregate Spending Target of \$614 million under the Research Funding Agreement.

10. Under the Research Funding Agreement, the difference between the Aggregate Spending Target (\$614 million) and Abbott's claimed actual spending (\$486 million) over the Program Term is known as the Aggregate Carryover Amount. Abbott was required to spend the Aggregate Carryover Amount (\$128 million) by December 31, 2005.

11. It did not. In a response to an interrogatory posed by John Hancock, Abbott represented that it spent only \$74 million in 2005, leaving \$54 million of the Aggregate Carryover Amount unspent. (See Ex. D).

12. Under the terms of the Research Funding Agreement, Abbott owes John Hancock one-third of that amount, or \$18 million.

13. John Hancock believes that Abbott's actual spending on Program Related costs from 2001 to 2005 may be even less than Abbott represented. Therefore, Abbott may owe John Hancock even more than \$18 million. Until John Hancock obtains full discovery, the actual amount of its claim is unknown.

Executed this 3rd day of February, 2006 at Boston, Massachusetts.

/s/ Joseph H. Zwicker

Joseph H. Zwicker

BBO No. 560219

Choate, Hall and Stewart

Two International Place

Boston, MA 02110

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and that paper copies will be sent to those non-registered participants (if any) on February 3, 2006.

/s/ Lisa H. Lipman  
Lisa H. Lipman

# **Exhibit A**

**John Hancock Life Insurance Company**

Stephen J. Blewitt  
Senior Managing Director  
Bond & Corporate Finance Group

John Hancock Place  
Post Office Box 111  
Boston, Massachusetts 02117  
Phone: (617) 572-9624  
Fax: (617) 450-8053  
e-mail: sblewitt@jhancock.com



January 5, 2006

**BY TELECOPIER AND U.S. MAIL**

James L. Tyree  
Senior Vice President  
Abbott Nutrition International  
ABBOTT LABORATORIES  
200 Abbott Park Road  
Abbott Park, Illinois 60064-6189

Re: Research Funding Agreement by and between Abbott Laboratories and John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company, and Investors Partner Life Insurance Company (collectively, "John Hancock"), dated as of March 13, 2001 (the "Agreement")

Dear Jim:

I write pursuant to Sections 3.3(b) and 16.7 of the Agreement. Section 3.3(b) provides, in relevant part, that,

[i]f Abbott does not spend the Aggregate Carryover Amount on Program Related Costs during such subsequent year [i.e., 2005], Abbott will pay to John Hancock one-third of the Aggregate Carryover Amount that remains unspent by Abbott, within thirty (30) days after the end of such subsequent year.

Abbott has yet to provide John Hancock with its 2006 Annual Research Plan or its 2005 Status Report as required under the Agreement. The Annual Research Plan for 2006 should have been delivered to us on or before November 17, 2005 and the Status Report was due on or before December 1, 2005. In a letter dated December 6, 2005, I requested that you provide me with those documents immediately. You have not responded to my letter or provide me with the reports. On December 19, 2005, I e-mailed Suzanne Lebold notifying her regarding your lack of response to my letter and requesting her assistance with providing me with those reports. On December 22, 2005, Ms. Lebold responded that the "documents are being put together and will be available shortly".

James L. Tyree  
January 5, 2006  
Page 2

In the meantime, John Hancock has information from Abbott that indicates that Abbott did not spend the entire Aggregate Carryover Amount in 2005, and that a payment equal to one-third of the unspent amount will be due and payable to John Hancock, pursuant to Section 3.3(b), on or before January 30, 2006. We also have reason to believe, however, that Abbott currently does not intend to make such a payment to John Hancock by the required deadline.

In light of Abbott's apparent intention not to make the payment required under Section 3.3(b), John Hancock hereby requests an executive meeting with Abbott within thirty (30) days of this notice for the purpose of attempting to resolve the foregoing dispute in accordance with the requirements of Section 16.7. I invite you to contact me at your earliest convenience to schedule such a meeting. Or, if Abbott wishes, we can discuss this issue at the court-ordered mediation session in Boston on January 9, 2006. Please let me know Abbott's preference prior to that date.

Very truly yours,



Stephen J. Blewitt

cc: President – Abbott Pharmaceutical Products Division (by fax and first class mail)  
General Counsel – Abbott Laboratories (by fax and first class mail)  
Suzanne A. Lebold, Ph.D. – Abbott Laboratories (by e-mail and first class mail)  
Lawrence R. Desideri, Esq. (by fax and first class mail)  
Peter E. Gelhaar, Esq. (by first class mail)  
Brian A. Davis, Esq. (by first class mail)

# **Exhibit B**



Suzanne A. Lebold, PhD  
Divisional Vice President  
Scientific Assessment & Technology Licensing  
Abbott  
Dept. R50A, Bldg. AP34-2  
200 Abbott Park Road  
Abbott Park, IL 60064-6167

t 847-837-1438  
f 847-837-1771  
Email: suzanne.a.lebold@abbott.com



January 24, 2006

**VIA FAX AND FEDERAL EXPRESS**

Mr. Stephen J. Blewitt  
Senior Managing Director  
John Hancock Life Insurance Company  
John Hancock Place  
Post Office Box 111  
Boston, MA 02117  
Phone: 617-572-9624 / Fax: 617-572-6454

**Re: Research Funding Agreement Between Abbott Laboratories ("Abbott") and John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company and Investors Partner Life Insurance Company (collectively, "Hancock") Dated March 13, 2001 (the "Agreement")**

Dear Mr. Blewitt:

I write in response to your January 5, 2006 letter to James Tyree in which you request an executive meeting with Abbott concerning a payment you claim is owed to Hancock pursuant to Section 3.3(b) of the Agreement. As a preliminary matter, I previously informed you that Mr. Tyree has moved on to a different position. Pursuant to Section 16.1 of the Agreement, I ask that you please direct all future correspondence on matters relating to the Agreement to me and not to Mr. Tyree. With regard to the substance of your January 5 letter, John Hancock's claim is contrary to both the language and purpose of the Agreement, and it directly contradicts the sworn testimony you gave to the federal court in Boston concerning the Agreement.

Hancock's demand for payment under Section 3.3(b) is premised on the false assumption that Abbott was required to spend \$614 million without regard to the actual contribution made by Hancock. As you testified in the affidavit you submitted to the federal court in Boston, and upon which (in part) Hancock prevailed at the trial level, the very purpose of the Agreement was for Hancock to share with Abbott the financial burden of the development of new pharmaceutical compounds so that Abbott could pursue more potentially viable drug development opportunities than its projected internal funding would allow. As you stated to the Court under oath,



Abbott, for its part, agreed to spend at least \$400 million of its own funds on Program Related Costs over the four-year Program Term, and to make certain milestone and royalty payments to John Hancock depending on the progress and commercial success of the Program Compounds. . . . The *combined total* of John Hancock's maximum funding contribution and Abbott's minimum funding contribution (*i.e.*, \$614,000,000) is defined in the Agreement as the "Aggregate Spending Target." (Emphasis added).

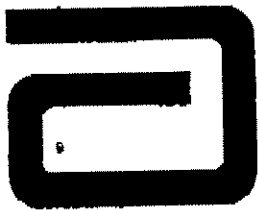
Because the Aggregate Spending Target, as you described it, was from the outset a "combined total" of both Abbott's \$400 million minimum funding contribution and Hancock's \$214 million maximum funding contribution, the Aggregate Spending Target necessarily is reduced by any payments Hancock does not make under the Agreement. Nothing in the Agreement requires Abbott to increase its share of this "combined total" to make up for payments Hancock does not make. Indeed, Section 3.5 of the Agreement makes clear that Abbott's sole responsibility is to provide funding "in excess of Program Payments from John Hancock."

As I believe you are aware, through 2005 Abbott has spent far more than its \$400 million portion of the Aggregate Spending Target, independent of Hancock's payments to date. Abbott's spending on Program Related Costs through 2005, independent of Hancock's \$104 million contribution, was approximately \$441 million. Accordingly, for this and other reasons, there has been no shortfall on Abbott's part that would trigger any obligation to make any payment to Hancock under Section 3.3(b) of the Agreement.

With respect to the scheduling of an executive meeting, Abbott is amenable to conducting an executive-level global settlement discussion. Please let us know how you would like to proceed.

Very truly yours,

Suzanne A. Lebold, Ph.D.  
Divisional Vice President  
Scientific Assessment and Technology Licensing  
Global Pharmaceutical Licensing and New Business Development



cc: VIA FAX and FEDERAL EXPRESS  
John Hancock Life Insurance Company  
200 Clarendon Street, T-57  
Boston, MA 02117  
Attn: Bond & Corporate Finance Group  
Phone: 617-572-6000 / Fax: 617-572-6454

John Hancock Life Insurance Company  
200 Clarendon Street, T-50  
Boston, MA 02117  
Attn: Investment Law Division  
Phone: 617-572-6000 / Fax: 617-572-9268

# Exhibit C

JOHN HANCOCK V ABBOTT>

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 \* \* \* \* \*  
4 JOHN HANCOCK LIFE INSURANCE \*  
COMPANY \*  
5 Plaintiff \*  
6 VERSUS \* CA-05-11150-DPW  
7 ABBOTT LABORATORIES \*  
Defendant \*  
8 \* \* \* \* \*

9 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK  
10 UNITED STATES DISTRICT COURT JUDGE  
11 STATUS CONFERENCE  
12 OCTOBER 13, 2005

13 APPEARANCES:

14 BRIAN A. DAVIS, ESQ., Choate, Hall & Stewart,  
15 Two International Place, 100-150 Oliver Street,  
Boston, Massachusetts 02110, on behalf of the  
16 Plaintiff  
17 LAWRENCE R. DESIDERI, ESQ., Winston & Strawn, LLP,  
35 West Wacker Drive, Chicago, Illinois 60601-9703,  
18 on behalf of Defendant  
19 PETER E. GELHARR, ESQ., Donnelly, Conroy & Gelhaar,  
LLP, One Beacon Street, 33rd Floor, Boston,  
20 Massachusetts 02108, on behalf of Defendant  
21 Courtroom No. 1 - 3rd Floor  
1 Courthouse Way  
22 Boston, Massachusetts 02210  
2:45 P.M. - 3:00 P.M.

23 Pamela R. Owens - Official Court Reporter  
24 John Joseph Moakley District Courthouse  
1 Courthouse Way - Suite 3200  
25 Boston, Massachusetts 02210

OCTOBER 13, 2005>

## JOHN HANCOCK V. ABBOTT&gt;

<p style="text-align: right;">Page 2</p> <p>1 CA-05-11150-DPW 2 OCTOBER 13, 2005 3 THE COURT: Well, I guess what's bothersome 4 to me about the schedule is it seemed prolonged. I 5 mean, you've been at it for a while, haven't you, -- 6 MR. DAVIS: Your Honor, -- 7 THE COURT: -- the disputes about this 8 contract? 9 MR. DAVIS: Brian Davis, Your Honor, 10 representing John Hancock. You recall in round one, as 11 we call it, discovery was limited. The issues were very 12 limited. 13 THE COURT: I understand. But this is the 14 kind of discovery schedule that's established for anti- 15 trust cases. It's not -- you know, what is there that 16 requires this kind of extended work? 17 MR. DAVIS: There are a number of issues in 18 the case, Your Honor, that -- honestly, I didn't think 19 that the schedule that we put out was too protracted. 20 But the number of issues -- 21 THE COURT: It's about two years, you know, 18 22 months. 23 MR. DAVIS: Well, I think we set up less than 24 a year for discovery -- fact discovery. 25 THE COURT: That's not -- well, fact</p>	<p style="text-align: right;">Page 4</p> <p>1 to it and a lot faster than that. I mean, it should 2 move a little quicker. 3 MR. DESIDERI: I think one of the reasons why 4 we went through and worked out the schedule for the 5 length of it was the number of issues as well. There 6 are a fairly substantial number of issues in the case 7 that the parties have alleged. 8 THE COURT: Number of issues. What does that 9 mean? 10 MR. DESIDERI: A lot of allegations, a lot of 11 factual intense allegations. 12 THE COURT: Well, but you're in a position to 13 know what your intent was and to respond fairly 14 quickly, I would assume. 15 The short of it is you've got to do something 16 more than say they alleged a lot and we anticipate 17 trouble. That doesn't do it with me. First, I don't 18 anticipate trouble. 19 MR. DESIDERI: Nor do we. 20 THE COURT: And there will be trouble if 21 trouble is created just so you both understand. 22 MR. DESIDERI: Oh, I understand. I hope there 23 is no trouble, Your Honor. 24 THE COURT: Right. Okay. So now we're on the 25 same sheet. And my view, I guess, is that you can close</p>
<p style="text-align: right;">Page 3</p> <p>1 discovery, yes. But the close of expert discovery is 2 January 2007. I just don't understand what's going to 3 take so long here. 4 MR. DAVIS: Your Honor, there will be 5 documents that we need to collect. That has been a bit 6 of a struggle in the past and I anticipate that we might 7 run into some struggles this time around. 8 THE COURT: What do you mean "struggles?" 9 MR. DAVIS: We had some difficulty. We had 10 some disagreements the last time around with respect to 11 document production that required some motion practice 12 as you may recall. I'm hopeful that we won't have that 13 again, but I'm anticipating that we may. And in 14 addition, there are -- 15 THE COURT: Is that going to happen? 16 MR. DESIDERI: They filed a motion to compel 17 in the other case, Your Honor. There could be some 18 motion practice. 19 THE COURT: Why? Look, you really have been 20 after each other for some time. You understand that I'm 21 going to provide a full opportunity to explore the case. 22 This kind of low-grade motion practice seems to me to be 23 not worth the effort. You should have some pretty clear 24 idea of what it is that you want and you should air on 25 the side of generosity in giving it to them and get down</p>	<p style="text-align: right;">Page 5</p> <p>1 all of your discovery -- that's all of your discovery 2 off by September 29th. And, so, I back it up a bit. 3 First, I don't see that you should be joining 4 additional parties. Who else is coming into this? 5 MR. DESIDERI: I don't foresee -- 6 MR. DAVIS: Your Honor, at this point in time, 7 I don't anticipate any. 8 THE COURT: Okay. So that's a placeholder. 9 Amendment of pleadings, why would you be 10 amending your pleadings? 11 MR. DAVIS: That's a possibility, Your Honor. 12 As you noted in your September 16th decision, there is a 13 payment due at the end of 2005. We have indications 14 from Abbott that they may not wish to make that payment. 15 If they do not, then we'll be amending to add. The 16 payment is not due until the end of 2005. It's not yet 17 ripe, but we may have to amend. It's due by the end of 18 January. 19 THE COURT: But it's solely for that purpose? 20 MR. DAVIS: Yes, Your Honor. That's why I 21 chose that particular date. 22 THE COURT: All right. But we're not amending 23 to expand what I've been told are numerous issues in 24 this case. 25 So, what kind of experts are we talking about</p>

## JOHN HANCOCK V ABBOTT&gt;

<p style="text-align: right;">Page 6</p> <p>1 here?</p> <p>2 MR. DAVIS: Your Honor, there may be some</p> <p>3 industry experts regarding the development of</p> <p>4 pharmaceutical compounds because there are some issues</p> <p>5 regarding whether they have engaged in commercially</p> <p>6 unreasonable efforts. But also, I expect the other</p> <p>7 experts -- the economic experts -- to calculate what the</p> <p>8 losses have been to John Hancock on account of the</p> <p>9 claims that have been asserted.</p> <p>10 THE COURT: Well, but you can do that now.</p> <p>11 MR. DAVIS: They are working on it.</p> <p>12 THE COURT: I would assume so. But that means</p> <p>13 that they can probably get it done substantially before</p> <p>14 December. So, I'm going to back it up a bit.</p> <p>15 You don't plan on any experts of your own.</p> <p>16 These are going to be -- if you have experts, they are</p> <p>17 going to be rebuttal experts; is that it?</p> <p>18 MR. DESIDERI: Most likely, but not for sure,</p> <p>19 Your Honor.</p> <p>20 THE COURT: Okay. Tell me what the "not for</p> <p>21 sure" part is.</p> <p>22 MR. DESIDERI: There are allegations that we</p> <p>23 didn't develop our own drugs at a commercially</p> <p>24 reasonable pace. We may have experts, for example,</p> <p>25 that can come in and testify that we did, in fact, act</p>	<p style="text-align: right;">Page 8</p> <p>1 witness -- for example, even if they didn't call an</p> <p>2 expert to say what we did was commercially unreasonable,</p> <p>3 we might still want to call them and just say what we</p> <p>4 did is commercially unreasonable -- commercially</p> <p>5 reasonable. I'm sorry.</p> <p>6 THE COURT: All right. So I guess what I'm</p> <p>7 going to suggest is that the parties by May 5th exchange</p> <p>8 an indication of who the experts they intend to proffer</p> <p>9 are, what subject matter of experts are that you want to</p> <p>10 proffer. It's just an outline of it, but it gives some</p> <p>11 idea so that you're both aware of what's --</p> <p>12 MR. DESIDERI: Of the affirmative experts?</p> <p>13 THE COURT: Right. And then as to those</p> <p>14 experts, expert reports to be provided by June 1,</p> <p>15 rebuttal experts by July 7. And these are the kinds of</p> <p>16 reports that are necessary for compliance with Rule 26.</p> <p>17 And then I'll permit the close of expert discovery by</p> <p>18 August 25th. That means you're doing the discovery</p> <p>19 depositions -- if you choose to do that -- during that</p> <p>20 time period.</p> <p>21 Then what I'm going to do is say that the</p> <p>22 dispositive motions will be filed by September 29th;</p> <p>23 that responses are to be filed by October 26th; and</p> <p>24 replies by November 18th. And then we'll see where we</p> <p>25 stand on this. But that seems to me, based on the</p>
<p style="text-align: right;">Page 7</p> <p>1 reasonably.</p> <p>2 THE COURT: But that's a rebuttal expert to</p> <p>3 their allegation. Do you have something of your own</p> <p>4 that you're going to be doing?</p> <p>5 MR. DESIDERI: Nothing that comes to mind,</p> <p>6 Your Honor, but we could.</p> <p>7 THE COURT: Okay. Well, so tell me what you</p> <p>8 could do.</p> <p>9 MR. DESIDERI: I'm trying to think of all the</p> <p>10 issues, all the allegations that they have upon which</p> <p>11 expert testimony might be appropriate. In response to</p> <p>12 some of their other allegations, I think that we</p> <p>13 could have experts on custom and practice in the</p> <p>14 pharmaceutical industry.</p> <p>15 THE COURT: Again, though, these are rebuttal</p> <p>16 experts. I'm just trying to get the schedule</p> <p>17 straightened away. Are there any affirmative experts</p> <p>18 that you're going to be using -- that is, that you</p> <p>19 believe you have the burden of proof and consequently</p> <p>20 are going to be attempting to proffer experts on behalf</p> <p>21 of your position on that burden of proof?</p> <p>22 MR. DESIDERI: I don't think there are any in</p> <p>23 which we would have the burden of proof. But there may</p> <p>24 be some that are not strict rebuttal to an expert they</p> <p>25 have. For example, Your Honor, we may think an expert</p>	<p style="text-align: right;">Page 9</p> <p>1 fairly substantial experience the parties have had in</p> <p>2 this area, to be a more appropriate schedule for this</p> <p>3 case.</p> <p>4 Now, are there other things we need to deal</p> <p>5 with here?</p> <p>6 MR. DAVIS: No, Your Honor. May I just ask:</p> <p>7 With the schedule that you contemplate, is there a</p> <p>8 cutoff for fact discovery? When would that be?</p> <p>9 THE COURT: It's the same time as the cutoff</p> <p>10 of expert discovery.</p> <p>11 MR. DAVIS: Very good.</p> <p>12 THE COURT: You can conduct your -- I'm not</p> <p>13 going to interfere with the way in which you conduct</p> <p>14 your discovery --</p> <p>15 MR. DAVIS: Understood.</p> <p>16 THE COURT: -- or the sequencing in which you</p> <p>17 conduct your discovery. It just all has to be over by</p> <p>18 October -- August --</p> <p>19 MR. DAVIS: 25th.</p> <p>20 THE COURT: -- 25th. I mean, it's clear</p> <p>21 you're not going to do fact discovery that impacts on</p> <p>22 experts, but you'll work it out among yourselves. I'm</p> <p>23 not going to get involved in that.</p> <p>24 And similarly, as I think I indicated, I don't</p> <p>25 see any reason for trouble on documents and stuff. Just</p>

3 (Pages 6 to 9)

OCTOBER 13, 2005&gt;



## JOHN HANCOCK V ABBOTT&gt;

Page 10

1 get it done.  
 2 All right. Now, what else?  
 3 One thing that may or may not impact on this:  
 4 I assume that an appeal is going to be taken; is that  
 5 likely or do you know?  
 6 MR. DESIDERI: Yes. It's likely, Your Honor.  
 7 THE COURT: Okay. I don't see that it has an  
 8 impact on this case. It will proceed in the ordinary  
 9 course and be resolved in the ordinary course. And my  
 10 expectation is it's a relatively limited record.  
 11 MR. DAVIS: Your Honor, on that point, only I  
 12 note there's a counterclaim having to do with failure to  
 13 pay the fourth program payment. And I think that that  
 14 counterclaim is resolved by round one. And I'm assuming  
 15 that there isn't much need for discovery on that issue,  
 16 additional discovery on that issue, since it had already  
 17 been addressed in round one.  
 18 THE COURT: Right.  
 19 MR. DAVIS: We won't be doing further  
 20 discovery on that point.  
 21 THE COURT: I don't -- is there?  
 22 MR. DESIDERI: No.  
 23 THE COURT: I mean, if the memorandum and  
 24 order I issued is correct, then it's almost mechanical  
 25 at that point. Okay. But I simply don't see any reason

Page 11

1 for modifying the discovery schedule to deal with -- the  
 2 discovery schedule in this to deal with the contingency  
 3 that's created by the appeal. We'll simply move forward  
 4 on that and the appeal will move forward. And that  
 5 presumably will be about the same time that there would  
 6 be a resolution by the end of the discovery, I would  
 7 think, based on my sense of how long it takes one of  
 8 these cases to get put in a posture for review by the  
 9 Court of Appeals -- review and resolution.  
 10 All right. Anything else we need to talk  
 11 about?  
 12 MR. DESIDERI: Not from our end.  
 13 MR. DAVIS: No, Your Honor.  
 14 THE COURT: Okay. Fine. Thank you very much.  
 15 MR. ZWICKER: Thank you, Your Honor.  
 16 RECESSED AT 3:00 P.M.  
 17  
 18 C E R T I F I C A T E  
 19 I, PAMELA R. OWENS, Official Court Reporter,  
 20 U. S. District Court, do hereby certify that the  
 21 foregoing is a true and correct transcription of the  
 22 proceedings taken down by me in machine shorthand and  
 23 transcribed by same.  
 24  
 25



# **Exhibit D**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN HANCOCK LIFE INSURANCE  
COMPANY, JOHN HANCOCK VARIABLE  
LIFE INSURANCE COMPANY, and  
MANULIFE INSURANCE COMPANY (f/k/a  
INVESTORS PARTNER LIFE INSURANCE  
COMPANY),

Plaintiffs,

v.

ABBOTT LABORATORIES,

Defendants,

CIVIL ACTION NO. 05-11150-DPW

**ABBOTT LABORATORIES' RESPONSES AND OBJECTIONS  
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant Abbott Laboratories ("Abbott"), by its undersigned counsel and pursuant to Rule 33 of the Federal Rules of Civil Procedure and Local Rules, hereby responds and objects the First Set of Interrogatories of Plaintiffs John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company, and Investors Partner Life Insurance Company's (collectively, "Hancock").

**GENERAL OBJECTIONS AND RESPONSES**

The following General Objections and Responses apply to each and every one of the numbered interrogatories below, and the General Objections and Responses shall be deemed continuing as to each interrogatory and are not waived, or in any way limited, by the specific objections and answers to any individual interrogatory.

1. Abbott objects to the "Definitions and Instructions" set forth in Hancock's interrogatories, as well as the interrogatories themselves, to the extent that

13. Please state all modifications that have been made to Abbott's preliminary Annual Research Plan for 2005 since November 16, 2004, including without limitation the monetary effect of each such modification and the reason(s) for each such modification.

**Response:** Abbott specifically objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and exceeds the total number of permitted interrogatories, including all discrete subparts. Abbott further objects to this interrogatory to the extent that it seeks information provided to Hancock that is the subject of either of the Non-Use Agreements between Abbott and Hancock on the ground that the information is not discoverable or admissible and thus outside the permitted scope of discovery under Fed. R. Civ. P. 26.

Subject to these specific objections and its General Objections and Responses, and without waiving them, Abbott states that there have been no "modifications" made to the preliminary Annual Research Plan for 2005 as provided to Hancock on or about November 16, 2004. Further answering, however, Abbott states that the total amount of spending on the remaining Program Compounds during 2005, as set forth below, was approximately \$11.6 million greater than the amount of total spending for 2005 that Abbott estimated in its preliminary Annual Research Plan for 2005 without any additional contribution from Hancock.

Further answering, Abbott's actual and Last Best Estimate ("LBE") of total expenditures on the Program Compounds for 2005 is as follows:

In Millions of U.S. Dollars	Month 11 YTD 2005	Month 12 LBE 2005	Total Year 2005
ABT-510	15.3	1.4	16.7
ABT-627 Atrasentan Base	39.0	4.1	43.1
ABT-627 Atrasentan Hormone Naïve Prostate Cancer	0.0	0.0	0.0
ABT-627 Japan	1.4	0.1	1.5

ABT-627 Non-Prostate Cancers	0.9	0.1	1.0
ABT-751	11.1	1.0	12.1
Total Program Spend	67.7	6.7	74.4

14. Please state the total amount of Abbott's intended and reasonably expected expenditures on Program Related Costs for the year 2005 as of the date of these interrogatories.

**Response:** Abbott specifically objects to the interrogatory on the grounds that it is not relevant to the claim or defense of any party, not reasonably calculated to lead to the discovery of admissible evidence, and exceeds the total number of permitted interrogatories, including all discrete subparts. Subject to its specific objections and its General Objections, and without waiving these objections, Abbott states as of October 26, 2005, the total amount of Abbott's intended and reasonably expected expenditures on Program Related Costs for the year 2005 was \$64.7 million.

Respectfully Submitted,

ABBOTT LABORATORIES

By: 

One of its attorneys

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WINSTON & STRAWN LLP

# **Exhibit E**

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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JOHN HANCOCK LIFE INSURANCE  
COMPANY, JOHN HANCOCK  
VARIABLE LIFE INSURANCE  
COMPANY, and MANULIFE  
INSURANCE COMPANY,

Plaintiffs,

v.

ABBOTT LABORATORIES,

Defendant.

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CIVIL ACTION NO. 05-11150-DPW

**JOINT STATEMENT  
PURSUANT TO LOCAL RULE 16.1**

Pursuant to Local Rule 16.1(D) and the Court's September 6, 2005 Order, plaintiffs John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company, and ManuLife Insurance Company (f/k/a Investor Partner Life Insurance Company) (collectively, "John Hancock"), and defendant Abbott Laboratories ("Abbott"), hereby submit the following Joint Statement:

1. **Agenda of Matters to be Discussed at the October 13, 2005 Scheduling Conference.**
  - a. Pre-trial schedule and discovery matters;
  - b. Trial by magistrate judge; and
  - c. Report on settlement discussion status.

**2. Rule 26(f) Conference.**

Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 16.1(B), a teleconference was held on September 22, 2005, and was attended by Brian Davis, Karen Collari Troake and Joseph Zwicker for John Hancock, and Lawrence Desideri, and Stephen D'Amore for Abbott. This Joint Statement reports the results of that conference and, except where indicated, jointly proposes a discovery plan and pre-trial schedule as set forth below.

**3. Rule 26(a)(1) Initial Disclosures.**

Pursuant to the Court's Order of September 6, 2005, the parties have agreed to an exchange of the initial disclosures required by Fed. R. Civ. P. 26(a)(1) by October 27, 2005.

**4. Limitations on Discovery.**

The proposals set forth below are subject to further motions by the parties, either jointly or individually.

The parties have agreed to the following limitations, subject to modification by leave of court:

- (i) Twenty (20) depositions per side pursuant to Fed. R. Civ. P. 30(d)(2);
- (ii) Twenty-five (25) interrogatories per side;
- (iii) Thirty (30) requests to admit per side;
- (iv) Three (3) sets of requests for production of documents per side; and
- (v) The deposition of each proposed trial expert pursuant to Fed. R. Civ. P. 30(d)(2).

**5. Scheduling.**

The parties agree that formal phasing of discovery is not necessary in this litigation. The proposals set forth below are subject to further motion by the parties, either jointly or individually.

<b>Event</b>	<b>Proposed Deadlines</b>
Initial Disclosures	October 27, 2005
Joinder of Other Parties	January 6, 2006
Amendment of Pleadings	February 6, 2006
Completion of Fact Discovery	September 29, 2006
Initial Expert Reports	November 18, 2006
Rebuttal Expert Reports	December 16, 2006
Close of Expert Discovery	January 30, 2007
Filing of Dispositive Motions and Opening Briefs	March 15, 2007
Response Briefs on Dispositive Motions	April 17, 2007
Reply Briefs on Dispositive Motions	May 8, 2007
Final Pre-Trial Conference	To be set by Court
Trial	To be set by Court

**6. Protective Order.**

On July 15, 2005, the Court entered the agreed upon stipulated protective order governing the handling of confidential and proprietary materials produced in discovery.

**7. Trial by Magistrate Judge.**

The parties do not consent to trial by Magistrate Judge.

**8. Settlement.**

The parties have engaged in face-to-face settlement negotiations and have exchanged written settlement proposals pursuant to Local Rule 16.1(C). The parties agree that, at present, a settlement does not appear likely.



9. Certifications Pursuant to Local Rule 16.1(D)(3).

- a. John Hancock's certification is attached hereto as Exhibit A.
- b. Abbott's certification is attached hereto as Exhibit B.

ABBOTT LABORATORIES

By its attorneys,

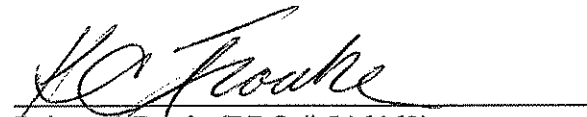
  
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Date: October 6, 2005

JOHN HANCOCK LIFE INSURANCE  
COMPANY, JOHN HANCOCK VARIABLE  
LIFE INSURANCE COMPANY and  
MANULIFE INSURANCE COMPANY

By their attorneys,

  
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CERTIFICATE OF SERVICE  
I hereby certify that a true copy of the above document was  
served upon the attorney of record for each other party  
by mail (by hand) on and electronically

on 10/06/05. 